



Financial Crimes Enforcement Network Department of the Treasury

FinCEN Ruling 2003-6 – Definition of Check Casher

October 24, 2003

Dear []:

This letter responds to your July 14, 2003 letter on behalf of [] and [], requesting an administrative ruling with respect to whether either party, [] or [], is a Money Services Business (“MSB”) as defined in 31 CFR 103.11(uu), and therefore subject to the MSB registration requirement found in 31 CFR 103.41. Based on the information provided in your letter and accompanying contract, FinCEN has determined that [] meets the definition of check casher found at 31 CFR 103.11(uu)(2), and therefore must register with FinCEN. However, [] is neither a check casher, nor an agent of a check casher for BSA purposes.

According to your letter, [] owns and operates personal financial services [terminals], which are placed at [] stores for the purpose of providing various kinds of financial services, including check cashing. [] contracts with [] to perform the check cashing function at the [terminals], including new member processing, check approval and denial, and operation of a customer service call center. [] retains title to the checks, and the risk of loss. [] replenishes the cash in the [terminals], and deposits the checks into a bank account maintained by []. [] pays [] the cost of the cash plus a fee for these services. [] and [] jointly own the customer identification information and transaction data that [] obtains during new member processing, and as a result of the check cashing process. Although [] imposes daily limits on check cashing depending on the nature of the check, a customer may cash more than \$1,000 in checks on a single day.

Because [] determines which checks to cash, clears the checks through its own bank account, bears the risk of loss if a check does not clear, pays for the cash that is provided to customers, maintains a customer service relationship with customers wishing to cash checks, and cashes checks for over \$1,000 per person, per day, FinCEN has determined that [] meets the MSB definition of check casher found at 31 CFR 103.11(uu)(2). As a check casher, [] is required to register with FinCEN pursuant to 31 CFR 103.41, and to comply with applicable BSA reporting and recordkeeping requirements, and the requirement to implement an anti-money laundering program.

FinCEN has determined that [] is neither a check casher nor an agent of a check casher for BSA purposes. While [] provides support functions to []’s check

cashing business, it does not perform check cashing functions. However, [] may be an MSB or an agent of an MSB by virtue of the other financial services that are offered through the [terminals], including money order sales and money transmission. Your letter indicates that [] does not conduct these financial services outside of third-party vendor relationships. However, depending on the nature of the services and the manner in which they are provided, it is possible that [] is an MSB or an agent of an MSB.

In arriving at our decision in this matter, FinCEN relied upon the accuracy and completeness of the representations made in your July 14, 2003 letter. Nothing precludes FinCEN from seeking further action should any of this information prove inaccurate or incomplete. Finally, we note that you have requested that the information contained in your letter and its attachments be held in confidence and exempt from disclosure under the Freedom of Information Act, 5 U.S.C. 552. FinCEN reserves the right to publish this letter as guidance to financial institutions with all identifying information about yourselves and your clients, [] and [], redacted. You will have 14 days after the date of this letter to identify any other information you believe should be redacted and the legal basis for the redaction. Should you have any questions, please telephone Christine Del Toro of my staff at (703) 905-3[590].

Sincerely,

//signed//

Judith R. Starr
Chief Counsel

cc: David M. Vogt, Executive Associate Director, Office of Regulatory Programs
Deborah Silberman, Supervisory Program Officer, MSB/Casinos/IRS Section